

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1732 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HEIRS OF AGRAWAL DAMODAR - JAGDISHBHAI DAMODARDAS

Versus

MAHENDRABHAI CHIMANLAL

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Appearance:

MR KV SHELAT for Petitioners

MR.J.V.MEHTA for Respondent

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 30/08/96

ORAL JUDGEMENT

The petitioners have questioned the legality and validity of the judgment and decree of eviction passed in HRP suit No.2211 of 1975 and confirmed in Civil Appeal No. 234/80 by filing this revision application under Section 29(2) of the Bombay Rents,Hotel and Lodging House Rates Control Act,1947 ('the Bombay Rent Act' for short).

The petitioners are the original defendants-tenants and the respondent is the original plaintiff-landlord who are hereinafter referred to as plaintiff and defendants for the sake of convenience and brevity.

The plaintiff filed the suit for recovery of arrears of rent and possession on the ground of reasonable and bona fide requirement for self occupation under section 13(1)(g) and acquisition of suitable residential accommodation under section 13(1)(l) of the Bombay Rent Act. The defendant resisted the suit. On appreciation of the facts and circumstances and the evidence on record, the trial court passed a decree for possession on 27.2.1980 on the ground of sections 13(1)(g) and 13(1)(l) which came to be affirmed in civil appeal No.234 of 1980.

The scope of revision under section 29(2) is very much limited. Although scope of revision under section 29(2) is little wider than the revision under section 115 of the Code of Civil Procedure, this court cannot be converted into appellate forum. The main anxiety of the court while appreciating the merits of a revision under section 29(2) is to see whether the impugned judgment and order are according to law. Reappraisal and reassessment of the evidence is not permissible unless and until it is successfully shown that there is misreading of evidence or non-application of mind or perversity in the finding of facts. This court will be loathe to interfere with the findings of fact keeping in mind the scope of revision, merits are required to be examined.

After having examined the facts and circumstances emerging from the record and having heard the learned advocates of the parties, this court is satisfied that the impugned judgment and order recording ejectment decree on the grounds of section 13(1)(g) and 13(1)(l) are justified. No perversity is pointed out, no illegality is spelt out, no misreading of evidence is suggested. In the circumstances, the finding of fact concurrently and consistently recorded by the courts below are required to be affirmed while dismissing this revision application on merits.

It is contended that tenant may be given reasonable time for vacating the premises as he is a tenant since long. This submission appears to be quite reasonable. Taking into account the over-all picture emerging from the record of the present case and peculiar facts, ends of justice will be satisfied if the tenant is granted time to vacate till 28th February 1998 on certain terms and conditions. The decree for possession shall not be

executed against the petitioners -original  
defendant-tenants until 28th February 1998 on the  
following conditions-

1. all the petitioners file an undertaking within a  
period of two weeks from today inter alia  
incorporating therein that they are in possession  
of the demise premises and that they shall hand  
over peaceful and vacant possession of the demise  
premises to the respondent-original landlord  
latest on 28th February 1998;
2. that they shall pay entire arrears of rent '
3. that they shall go on paying or tendering mesne  
profits equivalent to the amount of rent till  
28th February 1998.
- 4 that they shall not transfer,assign or alienate  
their interest in any manner in favour of anybody  
during that period.

In the result,this revision application is dismissed with  
no order as to costs. Rule is discharged.

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corrected.